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Electrical Associates, Inc. and International Brotherhood of Electrical Workers, Local 212, AFL-CIO. Case 9-CA-32617

August 15, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

Upon a charge and amended charge filed by International Brotherhood of Electrical Workers, Local 212, AFL-CIO (the Union) on February 13 and April 5, 1995, respectively, the General Counsel of the National Labor Relations Board issued an amended complaint (complaint) on April 12, 1995, against Electrical Associates, Inc. (the Respondent) alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.¹

On July 11, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On July 13, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed al-

legations in the Motion for Summary Judgment disclose that the Region, by letter dated May 16, 1995, notified the Respondent that unless an answer were received by May 25, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, has been engaged as an electrical contractor in the building and construction industry out of its Cincinnati, Ohio facility. During the 12-month period preceding issuance of the complaint, the Respondent provided services in excess of \$50,000 for Reece-Campbell, Inc. (Reece-Campbell), a corporation within the State of Ohio. Reece-Campbell is engaged as a general contractor in the building and construction industry. During the past calendar year ending December 31, 1994, Reece-Campbell performed services valued in excess of \$50,000 in States other than the State of Ohio. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About December 20, 1994, the Respondent interrogated an employee concerning his union membership and changed the job assignment of its employee Michael Huber. About December 21, 1994, the Respondent discharged its employee Michael Huber. The Respondent changed Huber's job assignment and discharged him because Huber formed, joined, or assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All employees performing electrical construction work within the jurisdiction of the Union employed by members of the National Electrical Contractors Association, Cincinnati Chapter (NECA) and of the employers who have authorized the National Electrical Contractors Association, Cincinnati Chapter to bargain on their behalf, including [the Respondent].

About February 17, 1993, the Respondent entered into a letter of assent whereby it agreed to be bound by the "Inside" collective-bargaining agreement be-

¹ Although the copy of the original charge, sent by certified mail was returned unclaimed, and the copies of the amended charge and amended complaint, also sent by certified mail, were returned unopened with the words "out of business" written on the face, a copy of the amended complaint sent by regular mail was not returned. The Respondent's refusal or failure to claim certified mail or to provide for receiving appropriate service cannot defeat the purposes of the Act. See, e.g., *National Automatic Sprinklers*, 307 NLRB 481 fn. 1 (1992); and *Michigan Expediting Service*, 282 NLRB 210 fn. 6 (1986). Furthermore, the failure of the Post Office to return documents served by regular mail indicates actual receipt of those documents by the Respondent. *Lite Flight, Inc.*, 285 NLRB 649, 650 (1987).

tween the Union and the National Electrical Contractors Association, Cincinnati Chapter (the Association), effective July 6, 1992, through May 28, 1994, and agreed to be bound to such future agreements between the Union and the Association unless timely notice not to be so bound was given.

The Respondent, an employer engaged in the building and construction industry, granted recognition to the Union as the exclusive collective-bargaining representative of the unit without regard to whether the majority status of the Union had ever been established under the provisions of Section 9(a) of the Act. Such recognition has been embodied in successive collective-bargaining agreements between the Union and the Association, the most recent of which is effective for the period May 29, 1994, through May 31, 1996 (the agreement). For the period from May 29, 1994, through May 31, 1996, based on Section 9(a) of the Act, the Union has been the limited exclusive collective-bargaining representative of the unit.

At all times since August 1994, the Respondent has not maintained in full force and effect all the terms and conditions of the agreement by failing to remit contributions to the Union's National Electrical Benefit Fund, the National Electrical Annuity Plan, and the Cincinnati Electrical Contractors Association Fund.

At all times since October 1994, the Respondent has not maintained in full force and effect all the terms and conditions of the agreement by failing to remit contributions to the Union's regular supplementary unemployment benefit "A" fund, the major supplementary unemployment benefit "B" fund, the health and welfare fund, and the pension fund.

At all times since November 1994, the Respondent has not maintained in full force and effect all the terms and conditions of the agreement by failing to remit contributions to the Union's joint apprentice and training trust fund, the COPE fund and working dues.

These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without the consent of the Union and without affording it an opportunity to bargain with the Respondent with respect to this conduct and the effect of this conduct.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By changing the job assignment of Michael Huber and thereafter discharging him, the Respondent

has also been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act. By changing wages, hours, and other terms and conditions of employment of the unit without prior notice to the Union, without the consent of the Union, and without affording it an opportunity to bargain with the Respondent with respect to this conduct and the effect of this conduct, the Respondent has also been failing and refusing to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d) of the Act and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent violated Section 8(a)(3) and (1) by changing the job assignment of and discharging Michael Huber, we shall order the Respondent to offer him immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge and to notify Huber in writing that this has been done.

Furthermore, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to make contractually required contributions to the various funds, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 fn. 7 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enf. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enf. 444 F.2d 502 (6th Cir. 1971),

with interest as prescribed in *New Horizons for the Retarded*, supra.²

Finally, having found that the Respondent violated Section 8(a)(5) and (1) by failing to remit working dues, we shall order the Respondent to remit such dues to the Union as required by the agreement, with interest as prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Electrical Associates, Inc., Cincinnati, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees concerning their union membership.

(b) Changing the job assignment of its employees or discharging them because they form, join, or assist International Brotherhood of Electrical Workers, Local 212, AFL-CIO, or engage in concerted activities or to discourage employees from engaging in these activities.

(c) Failing to maintain in full force and effect all the terms and conditions of the agreement between the Union and the National Electrical Contractors Association, Cincinnati Chapter (NECA), effective for the period May 29, 1994, through May 31, 1996, by failing to remit contributions to the Union's National Electrical Benefit Fund, the National Electrical Annuity Plan, the Cincinnati Electrical Contractors Association Fund, the Union's regular supplementary unemployment benefit "A" fund, the major supplementary unemployment benefit "B" fund, the health and welfare fund, the pension fund, the Union's joint apprentice and training trust fund, or the COPE fund, or by failing to remit working dues.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Michael Huber immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole, with interest, for any loss of earnings and other benefits suf-

fered as a result of the discrimination against him, in the manner set forth in the remedy section of this decision.

(b) Expunge from its files any and all references to the unlawful discharge of Michael Huber and notify him, in writing, that this has been done.

(c) Maintain in full force and effect the collective-bargaining agreement between the Union and the National Electrical Contractors Association, Cincinnati Chapter, effective from May 29, 1994, through May 31, 1996.

(d) Make all delinquent contributions that have not been made since August 1994 to the Union's National Electrical Benefit Fund, the National Electrical Annuity Plan, and the Cincinnati Electrical Contractors Association Fund; since October 1994 to the Union's regular supplementary unemployment benefit "A" fund, the major supplementary unemployment benefit "B" fund, the health and welfare fund, and the pension fund; and since November 1994 to the Union's joint apprentice and training trust fund and the COPE fund, and reimburse the unit employees, with interest, for any expenses ensuing from its failure to make the required contributions, as set forth in the remedy section of this decision.

(e) Remit the working dues to the Union which have not been remitted since November 1994, with interest, as set forth in the remedy section of this decision.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its facility in Cincinnati, Ohio, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

² To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. August 15, 1995

William B. Gould IV,	Chairman
Margaret A. Browning,	Member
Charles I. Cohen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees concerning their union membership.

WE WILL NOT change our employees' job assignment or discharge them because they form, join, or assist International Brotherhood of Electrical Workers, Local 212, AFL-CIO, or engage in concerted activities or to discourage employees from engaging in these activities.

WE WILL NOT fail to maintain in full force and effect all the terms and conditions of the agreement between the Union and the National Electrical Contractors Association, Cincinnati Chapter (NECA), effective for the period May 29, 1994, through May 31, 1996, by failing to remit contributions to the Union's National Electrical Benefit Fund, the National Electrical Annuity Plan, the Cincinnati Electrical Contractors Association Fund, the Union's regular supplementary un-

employment benefit "A" fund, the major supplementary unemployment benefit "B" fund, the health and welfare fund, the pension fund, the Union's joint apprentice and training trust fund, or the COPE fund, or by failing to remit working dues.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Michael Huber immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him, in the manner set forth in the remedy section of the decision.

WE WILL expunge from our files any and all references to the unlawful discharge of Michael Huber and notify him, in writing, that this has been done.

WE WILL maintain in full force and effect the collective-bargaining agreement between the Union and the National Electrical Contractors Association, Cincinnati Chapter, effective from May 29, 1994, through May 31, 1996.

WE WILL make all delinquent contributions that have not been made since August 1994 to the Union's National Electrical Benefit Fund, the National Electrical Annuity Plan, and the Cincinnati Electrical Contractors Association Fund; since October 1994 to the Union's regular supplementary unemployment benefit "A" fund, the major supplementary unemployment benefit "B" fund, the health and welfare fund, and the pension fund; and since November 1994 to the Union's joint apprentice and training trust fund and the COPE fund, and reimburse the unit employees, with interest, for any expenses ensuing from its failure to make the required contributions, as set forth in the remedy section of the decision.

WE WILL remit the working dues to the Union which have not been remitted since November 1994, with interest.

ELECTRICAL ASSOCIATES, INC.